

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

LARRY WAYNE LEWIS §  
VS. § CIVIL ACTION NO. 5:08-CV-48  
UNITED STATES OF AMERICA §

ORDER

Movant previously filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. Movant has filed a notice of appeal of the court's judgment. Before movant can appeal the judgment, a certificate of appealability must issue. 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *Barefoot v. Estelle*, 463 U.S. 880 (1982); *Butler v. Byrne*, 845 F.2d 501, 505 (5th Cir. 1988). Where the motion to vacate was rejected on the merits, the movant, to obtain a certificate of appealability, must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions are worth encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473 (2000). If the motion was denied on procedural grounds, the movant must show that jurists of reason would find it debatable: (1) whether the motion raises a valid claim of the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *Id.* The court must either issue a certificate of appealability indicating which issues satisfy the required showing, or must state the reasons why such a certificate should not issue. FED. R. APP. P. 22(b).

In this case the standards for issuance of a certificate of appealability are not met. For the reasons stated in the findings and conclusions previously adopted in this case, the court finds that movant has not made a substantial showing of the denial of a constitutional right, or demonstrated that the procedural ruling was incorrect. Accordingly, the court is of the opinion that a certificate of appealability should not issue in this case. It is therefore

**ORDERED** that a certificate of appealability is **DENIED**.

**SIGNED** this 7th day of October, 2008.



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DAVID FOLSOM  
UNITED STATES DISTRICT JUDGE